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Attorneys for Defendant
BEST DEAL FOOD COMPANY, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DARREN GILBERT,

Plaintiff,

v.

OAKDALE SHOPPING CENTER
L.L.C.; MONICA DIANE WILLEY dba
GOLD DUST PIZZA; BEST DEAL
FOOD COMPANY, INC. dba COST
LESS FOOD COMPANY,

Defendants.

Case No: 1:22-CV-01305-BAM

**STIPULATION TO VACATE AND SET
ASIDE CLERK'S ENTRY OF DEFAULT
AGAINST DEFENDANT BEST DEAL FOOD
COMPANY, INC. AND [PROPOSED]
ORDER THEREON**

Complaint Filed: 10/13/2022
Trial Date: Not Set Yet

1 TO THE COURT AND ALL INTERESTED PARTIES AND THEIR COUNSEL OF
2 RECORD:

3 Plaintiff DARREN GILBERT (“Plaintiff”) and Defendant BEST DEAL FOOD
4 COMPANY, INC. (“Defendant”), hereby stipulate to vacate and set aside the Clerk’s Entry of
5 Default entered on November 29, 2022 (Dkt. 7) as to Defendant.

6 **RECITALS**

7 **WHEREAS** on October 13, 2022, Plaintiff filed his Complaint, alleging Defendant
8 violated the Americans with Disabilities Act and the California Unruh Civil Rights Act (Civ.
9 Code § 51) in connection with a certain property/grocery market Defendant either operates and/or
10 owns;

11 **WHEREAS** Plaintiff contends he served Defendant’s Agents, and Defendant denies
12 being served;

13 **WHEREAS** the Clerk entered default against Defendant on November 29, 2022 (Dkt.
14 7);

15 **WHEREAS** subsequent to the entry of the default, counsel for Plaintiff and Defendant
16 met and conferred on a potential motion to set aside the default and agreed to stipulate to set
17 aside the default; and

18 **IT IS HEREBY STIPULATED** by and between Plaintiff and Defendant that the Clerks
19 Entry of Default entered on November 29, 2022 (Dkt. 7) as to Defendant be vacated and set aside,
20 and that Defendant shall file a responsive pleading within twenty-one (21) days of this
21 stipulation.

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1 **GOOD CAUSE** exists for the stipulated relief as Defendant seeks to have the default set
2 aside within less than 30 days after the default was entered. It is in the interest of justice to set
3 aside defaults so that cases may be decided on their merits, particularly when doing so can be
4 done through stipulation, rather than expending unnecessary court and party resources in
5 unopposed motions.

6 **IT IS SO STIPULATED.**

8 Dated: December 5, 2022

Respectfully submitted,

FISHER & PHILLIPS LLP

/s/ *Evan E. Kroll*

By:

NATHAN V. OKELBERRY
EVAN E. KROLL
Attorneys for Defendant
BEST DEAL FOOD COMPANY, INC.

15 Dated: December 5, 2022

Respectfully submitted,

MOORE LAW FIRM, P.C.

/s/ *Tanya E. Moore*

By:

TANYA E. MOORE
Attorneys for Plaintiff
DARREN GILBERT

21 **IT IS SO ORDERED.**

22 Dated: **December 5, 2022**

/s/ *Barbara A. McAuliffe*

UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; am employed with the law offices of Fisher & Phillips LLP and my business address is 444 South Flower Street, Suite 1500, Los Angeles, California 90071.

On December 5, 2022 I served the foregoing document entitled **STIPULATION TO VACATE AND SET ASIDE CLERK'S ENTRY OF DEFAULT AGAINST DEFENDANTS AND [PROPOSED] ORDER THEREON**; on all the appearing and/or interested parties in this action follows:

Tanya E. Moore
MOORE LAW FIRM, P.C.
300 South First Street, Ste. 342
San Jose, California 95113
Telephone (408) 298-2000
Facsimile (408) 298-6046

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Darren Gilbert

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☐ **[by MAIL]** - I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

☒ **[by ELECTRONIC SUBMISSION]** - I served the above listed document(s) described via the United States District Court's Electronic Filing Program on the designated recipients via electronic transmission through the CM/ECF system on the Court's website. The Court's CM/ECF system will generate a Notice of Electronic Filing (NEF) to the filing party, the assigned judge, and any registered users in the case. The NEF will constitute service of the document(s). Registration as a CM/ECF user constitutes consent to electronic service through the court's transmission facilities.

☐ **[by FEDERAL EXPRESS]** - I am readily familiar with the firm's practice for collection and processing of correspondence for overnight delivery by Federal Express. Under that practice such correspondence will be deposited at a facility or pick-up box regularly maintained by Federal Express for receipt on the same day in the ordinary course of business with delivery fees paid or provided for in accordance with ordinary business practices.

☐ **[by PERSONAL SERVICE]** - I caused to be delivered by messenger such envelope(s) by hand to the office of the addressee(s). Such messenger is over the age of eighteen years and not a party to the within action and employed with Attorney Service Name and Address .

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed December 5, 2022 at Los Angeles, California.

Karla Gonzalez

Print Name

By: _____

Signature